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15  
16 **UNITED STATES DISTRICT COURT**  
17 **EASTERN DISTRICT OF CALIFORNIA**

18 JORGE ARVIZU, individually and as  
19 successor-in-interest to KRYSTAL LEE  
20 ARVIZU aka KRYSTAL LEE  
CHURCH

21 Plaintiff,

22 v.

23 CITY OF FRESNO, a Municipal entity;  
FRANCIS HAMMON, an individual;  
24 ANTHONY ALVARADO, an  
individual; and DOES 1-5, inclusive,

25 Defendants.  
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Case No. 1:21-cv-00890-ADA-SKO  
[Assigned to the Hon. Ana de Alba and  
Magistrate Judge Shelia K. Oberto]

**STIPULATED PROTECTIVE  
ORDER RE CONFIDENTIAL  
DOCUMENTS**

(Doc. 18)

FAC Filed: August 2, 2021  
Trial Date: TBD

1 PURSUANT TO THE STIPULATION OF THE PARTIES, and pursuant to the  
2 Court's inherent and statutory authority, including but not limited to the Court's  
3 authority under the applicable Federal Rules of Civil Procedure and the United States  
4 District Court, Eastern District of California Local Rules; after due consideration of  
5 all of the relevant pleadings, papers, and records in this action; and upon such other  
6 evidence or argument as was presented to the Court; Good Cause appearing therefor,  
7 and in furtherance of the interests of justice,

8 IT IS HEREBY ORDERED that:

9 **1. SCOPE OF PROTECTION.**

10 The protections conferred by the parties' Stipulation and this Order cover not  
11 only Protected Material/Confidential Documents (as defined above), but also (1) any  
12 information copied or extracted from Protected Material; (2) all copies, excerpts,  
13 summaries, or compilations of Protected Material; and (3) any testimony,  
14 conversations, or presentations by Parties or their Counsel that might reveal Protected  
15 Material. However, the protections conferred by the parties' Stipulation and this  
16 Order do *not* cover the following information: (a) any information that is in the public  
17 domain at the time of disclosure to a Receiving Party or becomes part of the public  
18 domain after its disclosure to a Receiving Party as a result of publication not involving  
19 a violation of this Order, including becoming part of the public record through trial or  
20 otherwise; and (b) any information known to the Receiving Party prior to the  
21 disclosure or obtained by the Receiving Party after the disclosure from a source who  
22 obtained the information lawfully and under no obligation of confidentiality to the  
23 Designating Party. Specifically, prior to the filing of the instant lawsuit and pursuant  
24 to a Public Records Request made by Plaintiff's counsel (Philip J. Kaplan, Esq.), the  
25 City of Fresno produced to Plaintiff's counsel documents and things related to the  
26 subject incident (including without limitation BWV, Interviews, and Audiotapes).  
27 These documents and things were redacted by the City of Fresno. All parties agree  
28 that the above Public Records Act Request-produced materials, already produced by

1 the City of Fresno, were and are in the public domain and are, therefore, not “Protected  
2 Material” and are not subject to this Stipulated Protective Order. The California  
3 Public Records Act defines public records as including “any writing containing  
4 information relating to the conduct of the public’s business” and states that a  
5 disclosing agency *must* redact or edit a requested public record to protect confidential  
6 or protected material, while making “any reasonably segregable portion” available to  
7 the public. Government Code §§ 6252(e), 6253(a). As the law not only allows for  
8 redaction but places an affirmative duty on the state agency to redact confidential  
9 material, the City of Fresno has admitted that all unredacted portions of the documents  
10 it has produced are public records in the public domain.

11 Any use of Protected Material at trial shall be governed by the Orders of the  
12 trial judge: this Stipulation and its associated Protective Order do not govern the use  
13 of Protected Material at trial. Consistent with Judge de Alba’s Standing Order §1(l),  
14 this order (like all protective orders covering the discovery phase) shall not govern  
15 the filing of sealed or redacted documents on the public docket.

16  
17 **2. DEFINITIONS.**

18 2.1. Party: any party to this action, including all of its officers, directors,  
19 employees, agents, consultants, retained experts, house counsel and outside counsel  
20 (and/or the support staff thereof).

21 2.2. Disclosure or Discovery Material: all items or information, regardless of  
22 the medium or manner generated, stored or maintained (including, among other  
23 things, testimony, transcripts, or tangible things) that are produced – or generated in  
24 disclosures or responses to discovery – by any Party in this matter.

25 2.3. “Confidential” Information or Items: information or tangible things that  
26 qualify for protection under standards developed under Federal Rule of Civil  
27 Procedure Rule 26(c) and/or applicable federal privileges. This material includes  
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1 medical records, psychotherapeutic records, and autopsy photographs; as well as  
2 peace officer personnel records as defined by California Penal Code §§ 832.8, 832.5,  
3 832.7 and the associated case law; and personal identifying information of third  
4 parties.

5       2.4. Receiving Party: a Party that receives Disclosure or Discovery Material  
6 from a Producing Party, including a Party that has noticed or subpoenaed and is taking  
7 a deposition or comparable testimony.

8       2.5. Producing Party: a Party or non-party that produces Disclosure or  
9 Discovery Material in this action, including a Party that is defending a deposition  
10 noticed or subpoenaed by another Party; additionally, for the limited purpose of  
11 designating testimony subject to this Stipulation and Order pursuant to § 6.2(b)  
12 (*infra*), a “Producing Party” shall also be construed to include a Party that is attending  
13 and/or participating in a non-party deposition noticed/subpoenaed by another Party.

14       2.6. Designating Party: a Party or non-party that designates information or  
15 items that it produces in disclosures or in responses to discovery as  
16 “CONFIDENTIAL.”

17       2.7. Protected Material: any Disclosure or Discovery Material that is  
18 designated as “CONFIDENTIAL” under the provisions of this Stipulation and  
19 Protective Order. The term “Confidential Document” shall be synonymous with the  
20 term “Protected Material” for the purposes of this Stipulation and any associated  
21 Protective Order.

22       2.8. Outside Counsel: attorneys who are not employees of a Party but who  
23 are retained to represent or advise a Party in this action (as well as their support staffs).

24       2.9. House Counsel: attorneys who are employees of a Party (as well as their  
25 support staffs).

26       2.10. Counsel (without qualifier): Outside Counsel and House Counsel (as  
27 well as their support staffs).  
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1        2.11. Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
3 an expert witness or as a consultant in this action and who is not a past or a current  
4 employee of a Party and who, at the time of retention, is not anticipated to become an  
5 employee of a Party or a competitor of a Party's; as well as any person retained,  
6 designated, or disclosed by a Party as an expert pursuant to Federal Rules of Civil  
7 Procedure Rule 26(a)(2) or other applicable discovery Rules or statutes.

8        2.12. Professional Vendors: persons or entities that provide litigation support  
9 services (e.g., photocopying; videotaping; translating; preparing exhibits or  
10 demonstratives; and/or organizing, storing, retrieving data in any form or medium;  
11 etc.); and their employees and subcontractors.

12  
13 **3. PURPOSES AND LIMITATIONS.**

14        Disclosure and discovery activity in this action are likely to involve production  
15 of confidential, proprietary, or private information for which special protection from  
16 public disclosure and from use for any purpose other than prosecuting or defending  
17 this litigation would be warranted. Accordingly, the parties have stipulated to and  
18 petitioned the court to enter the following Proposed Order in compliance with Local  
19 Rule 137(b) and §1(g) of Judge de Alba's Standing Order.

20        The parties have acknowledged that this Order does not confer blanket  
21 protections on all disclosures or responses to discovery and that the protection it  
22 affords extends only to the specified information or items that are entitled, under the  
23 applicable legal principles, to treatment as confidential.

24        The parties further acknowledge, as set forth below, that this Order creates no  
25 entitlement to file confidential information under seal, except to the extent specified  
26 herein; Eastern District Local Rules 141, 141.1, 143, 230 and/or 251 set forth the  
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1 procedures that must be followed and reflects the standards that will be applied when  
2 a party seeks permission from the court to file material under seal.

3 Nothing in this Order shall be construed so as to require or mandate that any  
4 Party disclose or produce privileged information or records that could be designated  
5 as Confidential Documents/Protected Material hereunder.

6 **4. DURATION OF PROTECTION.**

7 Even after final disposition of this litigation, the confidentiality obligations  
8 imposed by this Order shall remain in effect until a Designating Party agrees  
9 otherwise in writing or a court order otherwise directs. Final disposition shall be  
10 deemed to be the later of (1) dismissal of all claims and defenses in this action, with  
11 or without prejudice; and (2) final judgment herein after the completion and  
12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
13 including the time limits for filing any motions or applications for extension of time  
14 pursuant to applicable law.

15 **5. DESIGNATION OF PROTECTED MATERIAL**

16 5.1. Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or non-party that designates information or items for protection under the  
18 parties' Stipulation and this Order must take care to limit any such designation to  
19 specific material that qualifies under the appropriate standards. A Designating Party  
20 must take care to designate for protection only those parts of material, documents,  
21 items, or oral or written communications that qualify – so that other portions of the  
22 material, documents, items or communications for which protection is not warranted  
23 are not swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routine designations are prohibited. Designations that  
25 are shown to be clearly unjustified, or that have been made for an improper purpose  
26 (e.g., to unnecessarily encumber or inhibit the case development process, or to impose  
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unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2. Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings, and regardless of whether produced in hardcopy or electronic form), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion that it is "CONFIDENTIAL." The placement of such "CONFIDENTIAL" stamp on such page(s) shall not obstruct the substance of the page's (or pages') text or content.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing



1 the specified documents, the Producing Party must affix the “CONFIDENTIAL”  
2 legend to each page that contains Protected Material. If only a portion or portions of  
3 the material on a page qualifies for protection, the Producing Party also must clearly  
4 identify the protected portion(s) (e.g., by making appropriate markings in the  
5 margins).

6 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
7 that the Party or non-party offering or sponsoring the testimony identify on the record,  
8 before the close of the deposition, hearing, or other proceeding, all protected  
9 testimony, and further specify any portions of the testimony that qualify as  
10 “CONFIDENTIAL.” When it is impractical to identify separately each portion of  
11 testimony that is entitled to protection, and when it appears that substantial portions  
12 of the testimony may qualify for protection, the Producing Party may invoke on the  
13 record (before the deposition or proceeding is concluded) a right to have up to twenty  
14 (20) days to identify the specific portions of the testimony as “CONFIDENTIAL.”

15 Only those portions of the testimony that are appropriately designated as  
16 “CONFIDENTIAL” for protection within the 20 days shall be covered by the  
17 provisions of the parties’ Stipulation and this Protective Order.

18 Transcript pages containing Protected Material must be separately bound by  
19 the court reporter, who must affix to each such page the legend “CONFIDENTIAL,”  
20 as instructed by the Producing Party.

21 (c) for information produced in some form other than documentary, and for  
22 any other tangible items (including information produced on electronic data storage  
23 device), that the Producing Party affix in a prominent place on the exterior of the  
24 container or containers in which the information or item is stored the legend  
25 “CONFIDENTIAL.” If only portions of the information or item warrant protection,  
26 the Producing Party, to the extent practicable, shall identify the protected portions,  
27 specifying the material as “CONFIDENTIAL.”  
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1        5.3. Inadvertent Failures to Designate. If timely corrected (preferably,  
 2 though not necessarily, within 30 days of production or disclosure of such material),  
 3 an inadvertent failure to designate qualified information or items as  
 4 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to  
 5 secure protection under the parties’ Stipulation and this Order for such material. If  
 6 material is appropriately designated as “CONFIDENTIAL” *after* the material was  
 7 initially produced, the Receiving Party, on timely notification of the designation, must  
 8 make reasonable efforts to assure that the material is treated in accordance with the  
 9 parties’ Stipulation and this Order.

10        5.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall  
 11 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove  
 12 a “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any  
 13 other action so as to make it appear that Protected Material is not subject to the terms  
 14 and provisions of the parties’ Stipulation and this Order. However, nothing in this  
 15 section shall be construed so as to prevent a Receiving Party from challenging a  
 16 confidentiality designation subject to the provisions of § 4, *infra*.

## 17        **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

18        6.1. Timing of Challenges. Any Party or Non-Party may challenge a  
 19 designation of confidentiality at any time that is consistent with the Court’s  
 20 Scheduling Order. Unless a prompt challenge to a Designating Party’s confidentiality  
 21 designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
 22 economic burdens, or a later significant disruption or delay of the litigation, a Party  
 23 does not waive its right to challenge a confidentiality designation by electing not to  
 24 mount a challenge promptly after the original designation is disclosed.

25        6.2. Meet and Confer. Prior to challenging a confidentiality designation, a  
 26 Challenging Party shall initiate a dispute resolution process by providing written  
 27 notice of each specific designation it is challenging, and describing the basis (and  
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1 supporting authority or argument) for each challenge. To avoid ambiguity as to  
2 whether a challenge has been made, the written notice must recite that the challenge  
3 to confidentiality is being made in accordance with this specific paragraph of this  
4 Protective Order. The parties shall attempt to resolve each challenge in good faith  
5 and must begin the process by conferring directly (in voice to voice dialogue, either  
6 in person, telephonically, or by other comparable means, but *not* by correspondence)  
7 within 14 days of the date of service of notice.

8 In conferring, the Challenging Party must explain the specific basis for its belief  
9 that the confidentiality designation was not proper and must give the Designating  
10 Party an opportunity to review the designated material, to reconsider the  
11 circumstances, and, if no change in designation is offered, to explain the basis for the  
12 chosen designation. A Challenging Party may proceed to the next stage of the  
13 challenge process only if it has engaged in this meet and confer process first or  
14 establishes that the Designating Party is unwilling to participate in the meet and confer  
15 process in a timely manner. Consistent with Judge de Alba's Standing Order §1(d)  
16 Counsel filing such a motion to challenge a designation "shall include a declaration  
17 that the parties exhausted meet and confer efforts, with a very brief summary of said  
18 efforts."

19 Frivolous challenges or refusals to change a designation of Protected Material,  
20 and those made for an improper purpose (*e.g.*, to harass or impose unnecessary  
21 expenses and burdens on other parties), may expose the offending Party to sanctions.

22 6.3. Judicial Intervention. If the Parties cannot resolve a confidentiality  
23 challenge without court intervention, the Designating Party shall file and serve a  
24 motion to retain confidentiality (under the applicable rules for filing and service of  
25 discovery motions) within 14 days of the parties agreeing that the meet and confer  
26 process will not resolve their dispute or within 21 days of the initial notice of  
27 challenge, whichever date is earlier. The parties must comply with Eastern District  
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1 Local Rules 141, 141.1, 143, 230 and/or 251 (including the joint statement re  
2 discovery dispute requirement) in any motion associated with this Protective Order.

3 Each such motion must be accompanied by a competent declaration affirming  
4 that the movant has complied with the meet and confer requirements imposed in the  
5 preceding paragraph. Failure by the Designating Party to make such a motion  
6 including the required declaration within 21 days (or 14 days, if applicable) shall  
7 automatically waive the confidentiality designation for each challenged designation.  
8 In addition, the Challenging Party may file a motion challenging a confidentiality  
9 designation at any time if there is good cause for doing so, including a challenge to  
10 the designation of a deposition transcript or any portions thereof. Any motion brought  
11 pursuant to this provision must be accompanied by a competent declaration affirming  
12 that the movant has complied with the meet and confer requirements imposed by the  
13 preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the  
15 Designating Party, regardless of whether the Designating Party is the moving party or  
16 whether such Party sought or opposes judicial intervention. Unless the Designating  
17 Party has waived the confidentiality designation by failing to file a motion to retain  
18 confidentiality as described above, all parties shall continue to afford the material in  
19 question the level of protection to which it is entitled under the Producing Party's  
20 designation until the court rules on the challenge.

21 6.4. Withdrawal of "CONFIDENTIAL" Designation. At its discretion, a  
22 Designating Party may remove Protected Material/Confidential Documents from  
23 some or all of the protections and provisions of the parties' Stipulation and this Order  
24 at any time by any of the following methods:

25 (a) Express Written Withdrawal. A Designating Party may withdraw a  
26 "CONFIDENTIAL" designation made to any specified Protected  
27 Material/Confidential Documents from some or all of the protections of the parties'  
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1 Stipulation and this Order by an express withdrawal in a writing signed by such Party  
2 (or such Party's Counsel, but not including staff of such Counsel) that specifies and  
3 itemizes the Disclosure or Discovery Material previously designated as Protected  
4 Material/Confidential Documents that shall no longer be subject to all or some of the  
5 provisions of the parties' Stipulation and Order. Such express withdrawal shall be  
6 effective when transmitted or served upon the Receiving Party. If a Designating Party  
7 is withdrawing Protected Material from only some of the provisions/protections of the  
8 parties' Stipulation and this Order, such Party must state which specific provisions  
9 are no longer to be enforced as to the specified material for which confidentiality  
10 protection hereunder is withdrawn: otherwise, such withdrawal shall be construed as  
11 a withdrawal of such material from all of the protections/provisions of the parties'  
12 Stipulation and this Order;

13 (b) Express Withdrawal on the Record. A Designating Party may withdraw  
14 a "CONFIDENTIAL" designation made to any specified Protected Material/  
15 Confidential Documents from all of the provisions/protections of the parties'  
16 Stipulation and this Order by verbally consenting in court proceedings on the record  
17 to such withdrawal – provided that such withdrawal specifies the Disclosure or  
18 Discovery Material previously designated as Protected Material/Confidential  
19 Documents that shall no longer be subject to any of the provisions of the parties'  
20 Stipulation and this Order. A Designating Party is not permitted to withdraw  
21 Protected Material from only some of the protections/ provisions of the parties'  
22 Stipulation and this Order by this method;

23 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A  
24 Designating Party shall be construed to have withdrawn a "CONFIDENTIAL"  
25 designation made to any specified Protected Material/Confidential Documents from  
26 all of the provisions/protections of the parties' Stipulation and this Order by either  
27 (1) making such Protected Material/Confidential Records part of the public record –  
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1 including but not limited to attaching such as exhibits to any filing with the court  
2 without moving, prior to such filing, for the court to seal such records; or (2) failing  
3 to timely oppose a Challenging Party's motion to remove a "CONFIDENTIAL"  
4 designation to specified Protected Material/Confidential Documents.

5 Nothing in the parties' Stipulation and this Order shall be construed so as to  
6 require any Party to file Protected Material/Confidential Documents under seal,  
7 unless expressly specified herein.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL.**

9 7.1. Basic Principles. A Receiving Party may use Protected Material that is  
10 disclosed or produced by another Party or by a non-party in connection with this case  
11 only for preparing, prosecuting, defending, or attempting to settle this litigation – up  
12 to and including final disposition of the above-entitled action – and not for any other  
13 purpose, including any other litigation or dispute outside the scope of this action.  
14 Such Protected Material may be disclosed only to the categories of persons and under  
15 the conditions described in the parties' Stipulation and this Order. When the above  
16 entitled litigation has been terminated, a Receiving Party must comply with the  
17 provisions of § 11, below (FINAL DISPOSITION). Protected Material must be  
18 stored and maintained by a Receiving Party at a location and in a secure manner that  
19 ensures that access is limited to the persons authorized under the parties' Stipulation  
20 and its Order.

21 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless  
22 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
23 Receiving Party may disclose any information or item designated CONFIDENTIAL  
24 only to:

25 (a) the Receiving Party's Outside Counsel of record in this action, as well  
26 as employees of such Counsel to whom it is reasonably necessary to disclose the  
27 information for this litigation, as well as the sister of Plaintiff Jorge Arvizu, Rosie  
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1 Torres, who manages the affairs of Plaintiff, after Ms. Torres signs a copy of the  
2 “Agreement to Be Bound” by the instant Protective Order attached hereto as Exhibit  
3 A;

4 (b) the officers, directors, and employees (including House Counsel) of the  
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
6 who have signed the “Acknowledgment and Agreement to Be Bound” attached hereto  
7 as Exhibit A;

8 (d) the court and its personnel;

9 (e) Experts (as defined in the parties’ Stipulation and this Order) of the  
10 Receiving Party to whom disclosure is reasonably necessary for this litigation – each  
11 of whom, by accepting receipt of such Protected Material, thereby agree to be bound  
12 by the parties’ Stipulation and this Order;

13 (f) court reporters, their staffs, and professional vendors to whom disclosure  
14 is reasonably necessary for this litigation – each of whom, by accepting receipt of  
15 such Protected Material, thereby agree to be bound by the parties’ Stipulation and this  
16 Order;

17 (g) during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary – each of whom, by accepting receipt of such Protected  
19 Material, thereby agree to be bound by the parties’ Stipulation and this Order. Pages  
20 of transcribed deposition testimony or exhibits to depositions that reveal Protected  
21 Material may not be disclosed to anyone except as permitted under the parties’  
22 Stipulation and this Protective Order;

23 (h) the author or custodian of a document containing the information that  
24 constitutes Protected Material, or other person who otherwise possessed or knew the  
25 information; and

26 (i) any mediator or settlement officer, and their supporting personnel,  
27 mutually agreed upon by the parties.

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1       7.3. Notice of Confidentiality. Prior to producing or disclosing Protected  
2 Material/Confidential Documents to persons to whom the parties' Stipulation and this  
3 Order permits disclosure or production, a Receiving Party shall provide a copy of the  
4 parties' Stipulation and Order to such persons so as to put such persons on notice as  
5 to the restrictions imposed upon them herein: except that, for court reporters,  
6 professional vendors, and for witnesses being provided with Protected Material  
7 during a deposition, it shall be sufficient notice for Counsel for the Receiving Party  
8 to give the witness a verbal admonition (on the record, for witnesses) regarding the  
9 provisions of the parties' Stipulation and this Order and such provisions' applicability  
10 to specified Protected Material at issue.

11       7.4. Reservation of Rights. Nothing in the parties' Stipulation and this Order  
12 shall be construed so as to require any Producing Party to designate any records or  
13 materials as "CONFIDENTIAL." Nothing in the parties' Stipulation or this Order  
14 shall be construed so as to prevent the admission of Protected Material into evidence  
15 at the trial of this action, or in any appellate proceedings for this action, solely on the  
16 basis that such Disclosure or Discovery Material has been designated as Protected  
17 Material/Confidential Documents. Notwithstanding the foregoing, except where  
18 explicitly stated, nothing in the parties' Stipulation or this Order shall be construed as  
19 a waiver of any privileges or of any rights to object to the use or admission into  
20 evidence of any Protected Material in any proceeding; nor shall anything herein be  
21 construed as a concession that any privileges asserted or objections made are valid or  
22 applicable.

23       Nothing in the parties' Stipulation or this Order shall be construed so as to  
24 prevent the Designating Party (or its Counsel or custodian of records) from having  
25 access to and using Protected Material designated by that Party in the manner in which  
26 such persons or entities would typically use such materials in the normal course of  
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1 their duties or profession – except that the waiver of confidentiality provisions shall  
2 apply.

3       7.5. Requirement to File Confidential Documents Under Seal. Confidential  
4 Documents may be submitted in all law and motion proceedings before the Court if  
5 done so under seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or  
6 United States District Court, Eastern District of California Local Rules 140 (sealing),  
7 141 (redaction), 143, 230 and/or 251 (as applicable) and pursuant to the provisions of  
8 the parties’ Stipulation and this Order. Pursuant to §1(g) and 1(l) of Judge de Alba’s  
9 Standing Order, “[n]o document will be sealed, nor shall a redacted document filed,  
10 without prior approval of the court” and “if a party plans to make a filing that includes  
11 material an opposing party has identified as confidential and potentially subject to  
12 sealing, the filing party shall provide the opposing party with sufficient notice in  
13 advance of filing to allow the party to seek an order from the court regarding sealing  
14 or redacting the material in question.” If a Party’s request to file Protected Material is  
15 denied by the Court, then the Receiving Party may file the information in the public  
16 record unless otherwise instructed by the Court. Further, consistent with Judge de  
17 Alba’s Standing Order §1(l), this order (like all protective orders covering the  
18 discovery phase) shall not govern the filing of sealed or redacted documents on the  
19 public docket.

20       However, this paragraph (§ 7.5) shall not be construed so as to prevent a  
21 Designating Party or counsel from submitting, filing, lodging, or publishing any  
22 document it has previously designated as a Confidential Document without  
23 compliance with this paragraph’s requirement to do so under seal (i.e., a producing-  
24 disclosing party or counsel may submit or publish its own Confidential Documents  
25 without being in violation of the terms of the parties’ Stipulation and this Protective  
26 Order).

1 Furthermore, a Receiving Party shall be exempted from the requirements of  
2 this paragraph as to any specifically identified Confidential Document(s) where –  
3 prior to the submission or publication of the Confidential Document(s) at issue – the  
4 Designating Party of such specifically identified Confidential Document(s) has  
5 waived/withdrawn the protections of the parties’ Stipulation and this Order.

6 A Receiving Party shall also be exempt from the sealing requirements of this  
7 paragraph (§ 7.5) where the Confidential Documents/Protected Material at issue is/are  
8 **not** documents, records, or information regarding:

9 (1) private, personal information contained in peace officer personnel files  
10 (such as social security numbers, driver’s license numbers or comparable personal  
11 government identification numbers, residential addresses, compensation or pension  
12 or personal property information, credit card numbers or credit information, dates of  
13 birth, tax records and information, information related to the identity of an officer’s  
14 family members or co-residents, and comparable personal information about the  
15 officer or his family);

16 (2) the medical records or records of psychiatric or psychological treatment  
17 of any peace officer or party to this action.; and/or

18 (3) the personal identifying information of third parties (such as dates of  
19 birth, residential addresses, telephone numbers, social security numbers, driver's  
20 license numbers, etc.)

21 Nothing in this paragraph shall be construed to bind the Court or its authorized  
22 staff so as to limit or prevent the publication of any Confidential Documents to the  
23 jury or factfinder, at the time of trial of this matter, where the Court has deemed such  
24 Confidential Documents to be admissible into evidence.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2 **PRODUCED IN OTHER LITIGATION.**

3 If a Party is served with a subpoena or a court order issued in other litigation  
4 that compels disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party, preferably (though not  
7 necessarily) by facsimile or electronic mail. Such notification shall include a copy of  
8 the subpoena or court order at issue;

9 (b) promptly notify in writing the party who caused the subpoena or order to  
10 issue in the other litigation that some or all of the material covered by the subpoena  
11 or order is subject to the parties’ Stipulation and this Protective Order. Such  
12 notification shall include a copy of the parties’ Stipulation and this Protective Order;  
13 and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued  
15 by all sides in any such situation, while adhering to the terms of the parties’  
16 Stipulation and this Order.

17 If the Designating Party timely seeks a protective order, the Party served with  
18 the subpoena or court order shall not produce any information designated in this action  
19 as “CONFIDENTIAL” before a determination by the court from which the subpoena  
20 or order issued, unless the Party has obtained the Designating Party’s permission. The  
21 Designating Party shall bear the burden and expense of seeking protection in that court  
22 of its confidential material – and nothing in these provisions should be construed as  
23 authorizing or encouraging a Receiving Party in this action to disobey a lawful  
24 directive from another court.

25 The purpose of this section is to ensure that the affected Party has a meaningful  
26 opportunity to preserve its confidentiality interests in the court from which the  
27 subpoena or court order issued.

1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

2 9.1. Unauthorized Disclosure of Protected Material.

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
4 Protected Material to any person or in any circumstance not authorized under the  
5 parties' Stipulation and this Order, the Receiving Party must immediately:

6 (a) notify in writing the Designating Party of the unauthorized disclosures;

7 (b) use its best efforts to retrieve all copies of the Protected Material;

8 (c) inform the person or persons to whom unauthorized disclosures were made  
9 of all the terms of this Order; and

10 (d) request such person or persons consent to be bound by the Stipulation and  
11 this Order and execute the "Acknowledgement and Agreement to Be Bound" that is  
12 attached hereto as Exhibit A.

13 9.2. Inadvertent Production of Privileged or Otherwise Protected Material.

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
15 produced material is subject to a claim of privilege or other protection, the obligations  
16 of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
17 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
18 established in an e-discovery order that provides for production without prior  
19 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
20 parties reach an agreement on the effect of disclosure of a communication or  
21 information covered by the attorney-client privilege or work product protection, the  
22 parties may incorporate their agreement in the stipulated protective order submitted  
23 to the court.

24 **10. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

25 10.1. Filing of Protected Material.

26 Without advance written permission from the Designating Party, or a court  
27 order secured after appropriate notice to all interested persons, a Receiving Party may  
28

1 not file in the public record in this action any Protected Material. A Party that seeks  
2 to file under seal any Protected Material must comply with the applicable Federal and  
3 Local Rules as well as Judge de Alba's Standing Order (particularly with regard to  
4 §§1(g) and 1(l)).

5 **10.2. Public Dissemination of Protected Material.**

6 A Receiving Party shall not publish, release, post, or disseminate Protected  
7 Material to any persons except those specifically delineated and authorized by the  
8 parties' Stipulation and this Order (see § 5, *supra*); nor shall a Receiving Party  
9 publish, release, leak, post, or disseminate Protected Material/Confidential  
10 Documents to any news media, member of the press, website, or public forum (except  
11 as permitted under this Order regarding filings with the court in this action and under  
12 seal). Nothing in this paragraph shall be construed to bar a party from public  
13 dissemination of any unredacted portion of any record made available by an agency  
14 under the California Public Records Act (Government Code §§ 6252-6270).

15 **11. FINAL DISPOSITION.**

16 Unless otherwise ordered or agreed in writing by the Producing Party, within  
17 sixty (60) days after the final termination of this action (defined as the dismissal or  
18 entry of judgment by the above named court, or if an appeal is filed, the disposition  
19 of the appeal), upon written request by the Producing Party, each Receiving Party  
20 must return all Protected Material to the Producing Party – whether retained by the  
21 Receiving Party or its Counsel, Experts, professional vendors, agents, or any non-  
22 party to whom the Receiving Party produced or shared such records or information.

23 As used in this subdivision, "all Protected Material" includes all copies,  
24 abstracts, compilations, summaries or any other form of reproducing or capturing any  
25 of the Protected Material, regardless of the medium (hardcopy, electronic, or  
26 otherwise) in which such Protected Material is stored or retained.

1 In the alternative, at the discretion of the Receiving Party, the Receiving Party  
2 may destroy some or all of the Protected Material instead of returning it – unless such  
3 Protected Material is an original, in which case, the Receiving Party must obtain the  
4 Producing Party’s written consent before destroying such original Protected Material.

5 Whether the Protected Material is returned or destroyed, the Receiving Party  
6 must submit a written certification to the Producing Party (and, if not the same person  
7 or entity, to the Designating Party) within sixty (60) days of the aforementioned  
8 written request by the Designating Party that specifically identifies (by category,  
9 where appropriate) all the Protected Material that was returned or destroyed and that  
10 affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
11 summaries or other forms of reproducing or capturing any of the Protected material  
12 (in any medium, including but not limited to any hardcopy, electronic or digital copy,  
13 or otherwise).

14 Notwithstanding this provision, Counsel are entitled to retain an archival copy  
15 of all pleadings, motion papers, transcripts (be they records from trial, deposition,  
16 and/or hearings), legal memoranda filed with the court in this action, deposition and  
17 trial exhibits, expert reports, consultant and expert work product, as well as any  
18 correspondence or attorney work product prepared by Counsel for the Receiving  
19 Party, even if such materials contain Protected Material; however, any such archival  
20 copies that contain or constitute Protected Material remain subject to this Protective  
21 Order as set forth in Section 2, above. This court shall retain jurisdiction in the event  
22 that a Designating Party elects to seek court sanctions for violation of the parties’  
23 Stipulation and this Order; this court shall also retain jurisdiction in the event  
24 Receiving Party seeks modification of this Order, including without limitation  
25 changing the designation of Protected Material in order to disclose and publish  
26 materials produced in the litigation.

**12. MISCELLANEOUS.**

12.1. Right to Further Relief. Nothing in the parties' Stipulation or this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order pursuant to the parties' Stipulation, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in the parties' Stipulation or this Order. Similarly, no Party waives any right to object on any ground to use in evidence any of the material covered by the parties' Stipulation and this Protective Order.

DATED: September 8, 2022

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ Mildred K. O'Linn  
Mildred K. O'Linn  
Lynn L. Carpenter  
Deann R. Rivard  
Attorneys for Defendants CITY OF  
FRESNO, FRANCIS HAMMON, and  
ANTHONY ALVARADO

DATED: September 8, 2022

**LAW OFFICES OF PHILIP KAPLAN**

By: /s/ Philip J. Kaplan (as authorized  
on August 8, 2022)  
Philip J. Kaplan  
Attorney for Plaintiff, JORGE ARVIZU



**ORDER**

Pursuant to the parties' foregoing stipulation (Doc. 18),  
IT IS SO ORDERED.

Dated: **September 9, 2022**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on [date] in the case of *Arvizu v. City of Fresno, et al.*; Case No. 1:21-cv-00890-ADA-SKO. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Signature: \_\_\_\_\_